

Amendment No. 1 to SB0378

Kelsey
Signature of Sponsor

AMEND Senate Bill No. 378

House Bill No. 345*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 13, Part 2, is amended by adding the following new section:

(a) For purposes of this section, unless the context otherwise requires, "severe mental illness" means a person has a documented medical history of:

(1) One (1) or more of the following mental disorders as diagnosed using the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association:

- (A) Schizophrenia;
- (B) Schizoaffective disorder;
- (C) Bipolar disorder with psychotic features;
- (D) Major depressive disorder with psychotic features; or
- (E) Delusional disorder; and

(2) Symptoms of psychosis shown by hallucinations, extremely disorganized thinking, or other significant disruptions of consciousness, memory, and perception that are not attributable solely to repeated criminal conduct or the acute effects of the intentional use of alcohol or other drugs.

(b) Notwithstanding any law to the contrary, no defendant with a severe mental illness at the time of committing the offense of murder in the first degree shall be sentenced to death when the conditions of the severe mental illness, while not meeting the standard to be found not guilty by reason of insanity as defined in § 39-11-501,

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significantly impaired the defendant's capacity to appreciate the nature, consequences, or wrongfulness of their conduct related to the offense or significantly impaired the defendant's capacity to exercise rational judgment in relation to the conduct of the offense.

(c) The burden of production and persuasion to demonstrate to the court that the defendant, at the time of the offense, had a severe mental illness shall be upon the defendant to prove by a preponderance of the evidence. If the defendant raises the issue, the determination of whether the defendant had a severe mental illness at the time of the offense of first degree murder shall be made by the court at a hearing prior to the adjudication of the charges.

(d) If the court determines that the defendant was a person with a severe mental illness at the time of the offense, and if the trier of fact finds the defendant guilty of first degree murder, and if the district attorney general has filed notice of intention to ask for the sentence of imprisonment for life without possibility of parole as provided in § 39-13-208(b), then the jury shall fix the punishment in a separate sentencing proceeding to determine whether the defendant shall be sentenced to imprisonment for life without possibility of parole or imprisonment for life. The provisions of § 39-13-207 shall govern the sentencing proceeding.

(e) If the court determines that the defendant is not a person who had a severe mental illness at the time of the offense, the defendant shall still be entitled to offer evidence of insanity or raise any other applicable mental state defense or claim asserting that the defendant did not form the requisite mental state for the offense at

trial, and if convicted of first degree murder, the defendant shall still be entitled to offer evidence of diminished mental capacity or mental illness as a mitigating circumstance pursuant to § 39-13-204(j).

(f) The determination by the trier of fact that the defendant has a severe mental illness shall be appealable by the state but not the defendant on interlocutory appeal, and may be a basis of appeal by either the state or the defendant following the final judgment at trial.

SECTION 2. This act shall take effect July 1, 2017, the public welfare requiring it, and shall apply to any offense committed on or after such date.